

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN AVILA,

No. C 12-01237 WHA

Plaintiff,

v.

WELLS FARGO BANK;
WACHOVIA BANK, N.A.; NDEX WEST
LLC; and all persons or entities unknown
claiming any legal right, title, estate, lien or
interest in the property described in this
complaint adverse to Plaintiff's title
thereto; and DOES 1 through 25, inclusive,

**ORDER GRANTING
STIPULATED DESIGNATION
OF NON-MONETARY STATUS**

Defendants.

This wrongful-foreclosure action was filed in Alameda County Superior Court in February 2012. Defendants subsequently removed the action to this district (Dkt. No. 1). Plaintiff agrees that defendant NDeX West, LLC was not involved in the origination or servicing of the loan at issue here. Pursuant to stipulation of both parties (Dkt. No. 19), it is hereby

ORDERED that:

1. Defendant NDex West, LLC has been joined as a defendant based on its limited role in handling a non-judicial foreclosure sale as agent for the mortgage lenders and/or as successor trustee under the subject Deed of Trust and solely for the purpose of having all necessary parties before the Court;

2. Plaintiff does not assert any claims for monetary relief against Defendant NDex West, LLC, and plaintiff's First Amended Complaint does not allege any misconduct on defendant NDex West, LLC's part in the performance of its duties and/or in its handling of the non-judicial foreclosure as agent for the mortgage lenders and/or as successor trustee under the subject Deed of Trust.

1 Defendant NDex West, LLC shall have no liability to plaintiff for
2 any monetary damages, attorney's fees or costs of suit.

3 3. Defendant NDex West, LLC agrees to be bound by any
4 non-monetary judgment of order that may be entered by the Court
5 concerning (a) ownership and title to the subject property; (b) the
6 validity, enforceability and priority of the subject Deed of Trust;
7 and/or (c) the non-judicial foreclosure proceeding. Defendant
8 NDex West, LLC shall not be required to participate further in the
9 action or proceeding, shall not be subject to any monetary awards
10 as and for damages, attorney's fees or costs, shall be required to
11 respond to any discovery requests as a nonparty, and shall be
12 bound by and Court order relating to the subject Deed of Trust.

13 To be clear, this case differs from those in which a defendant merely files a declaration of
14 non-monetary status pursuant to California Civil Code Section 2924l. Section 2924l declarations
15 are generally not valid in federal court proceedings. *See Kennedy v. PLM Lender Services Inc.*,
16 No. 10-CV-04942, 2012 WL 1038632 at *5-6 (N.D. Cal. Mar. 27, 2012) (Alsup, J.). Instead,
17 our parties have expressly agreed to be bound by the above terms. Defendant NDeX West, LLC
18 shall accordingly be treated as a nominal defendant for the purpose of this action.

19 **IT IS SO ORDERED.**

20 Dated: May 21, 2012.

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23 WILLIAM ALSUP
24 UNITED STATES DISTRICT JUDGE
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